

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 582 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

JAYANTILAL SHIVLAL GANDHI

Appearance:

MR.B.D. DESAI, A.P.P. for Petitioner
MR DD VYAS for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 12/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondents of the offences punishable under Section 161 of Indian Penal Code and Section 5 (1) (2) of the Prevention of Corruption Act, recorded by the learned Special Judge, Valsad at Navsari, in Special Case No.5/86 vide judgment dated April 22, 1988 is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. Complainant Rasiklal T. Christian is a resident of Valsad town. He has five sons. The name of the youngest son is Barrington. Barrington had passed examination of Diploma in Printing Technology and was desirous of setting up a printing press. For this purpose he had made an application to obtain loan and the said loan was granted. For the purpose of starting printing press, a shed was erected in the residential compound of the complainant. The complainant had also purchased necessary machineries and installed them in the shed. For the purpose of running printing press, it was necessary to have electric connection. Therefore, the complainant had made an application to Gujarat Electricity Board for the purpose of getting electricity supply. On receipt of necessary intimation from the authorities of Gujarat Electricity Board, the complainant had also deposited a sum of Rs.2,850/-. However, electricity line from road to the shed was not laid and therefore, the complainant had to go to City Division Office of G.E.B. On May 28, 1984, the complainant had gone to the office of G.E.B. and met respondent No.2. The complainant had requested respondent No.2 to make the electricity line available, but according to the complainant, respondent No.2 had informed him that necessary goods were not received from the market and that he should make inquiry on the next Monday. According to the complainant, he had again seen respondent No.2 at his office on the next following Monday for the purpose of getting electric connection, but he was informed by respondent No.2 that two big works were pending execution and on execution of those works, complainant would be provided electric connection. The case of the complainant is that he had seen respondent No.2 in his office on June 6, 1984, because he was called on that day by respondent No.2, but respondent No.2 had informed him that three phase wire was not available and on availability of the same, electric connection would be made available. According to the complainant, June 6,

1984 was Thursday and therefore he had made inquiries in the market whether three phase wire was available and on learning that three phase wire was available in the market, he had seen respondent No.1 who is store keeper at G.E.B. office and tried to know from him whether electric connection could be made available to him if three phase wire was bought by him. The complainant has averred that thereupon respondent No.1 had learnt about the price of the three phase wire from the complainant which was available in the market and on learning that the cost of the wire was Rs.1,000/-, respondent No.1 had told the complainant to pay Rs.500/as illegal gratification to be paid to him as well as to respondent No.2. The complainant has claimed that he was asked by respondent No.1 to see him at the store in the evening as respondent No.2 was to be consulted in the matter. The complainant has claimed that accordingly he had again seen respondent No.1 at store room wherefrom respondent No.1 had taken him before respondent No.2 and informed respondent No.2 that party about whom he had talked in the morning, was present and was ready to pay the amount of illegal gratification. According to the complainant, respondent No.2 had thereupon told him to pay Rs.500/- to respondent No.1 and assured that electric connection would be made available to the complainant. The complainant has stated that the amount was to be paid to respondent No.1 at his office on June 8, 1984 at 8.30 in the morning. The complainant has claimed that he was not inclined to give illegal gratification demanded by the respondents and therefore, had approached office of Anti Corruption Bureau in the evening and informed P.I. Mr.Zala who was then on duty. The complainant has stated that thereafter at the office of Anti Corruption Bureau, his complaint was recorded by Mr.Zala and Mr.Zala had asked him to come in the morning at about 8.00 a.m. in the office of A.C.B. on June 8, 1984. As per the complainant on June 8, 1984 he had gone to the office of A.C.B. at about 5.30 a.m. in the morning and produced five currency notes each of denomination of Rs.100/- and at that time two Jamadars as well as two Panch witnesses were also present in the office of the Anti Corruption Bureau. After introduction of Panch witnesses with the complainant, the complainant had stated facts of his case to the Panch witnesses and Jamadar Subhash had conducted the experiment of anthracene powder on the currency notes which were smeared by him with anthracene powder. According to the complainant the notes were placed in the pocket of his bush-shirt and he was instructed by P.I. Mr.Zala to hand over to respondent No.1 on demand being made. Thereafter first part of the panchnama was concluded at the office of the Anti Corruption Bureau and

the complainant in the company of Panch No.1 had proceeded towards the store of G.E.B. at about 7.45 a.m. The complainant has claimed that when he was near the store room of G.E.B., respondent No.1 who was coming from the opposite direction had met him near the mile stone and demanded money whereupon he had handed over the amount of bribe to respondent No.1 and respondent No.1 had placed the currency notes in his hip pocket of the trousers after counting the same. The complainant has stated that he had given a signal, as result of which, the other members of the raiding party had rushed at the place where respondent No.1 had accepted the amount of illegal gratification and thereafter all had gone in the office of G.E.B. where the currency notes were recovered from hip pocket of respondent No.1 by Panch No.1 and experiment with ultra violet lamp was made by Jamadar Subhash. Further investigation into the case was made by P.I. Mr.Zala and on grant of sanction to prosecute, the respondents were chargesheeted for the offences punishable under Section 161 I.P.C. and Section 5 (1) (2) of the Prevention of Corruption Act. The charge under Section 161 I.P.C. and Section 5 (1) (2) of Prevention of Corruption Act was framed against the respondents. The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. Therefore in all eight witnesses were examined by the prosecution, i.e. (1) Rasiklal T. Christian as P.W.1 at Exh.14, (2) Zaverbhai G. Patel as P.W.2 at Exh.20, (3) Narendrakumar J. Bhatt as P.W.3 at Exh.24, (4) Kantilal L. Solanki as P.W.4 at Exh.30, (5) Babulal S. Naika as P.W.5 at Exh.31, (6) Gajubhai L. Patel as P.W.6 at Exh.32, (7) Kantibhai K. Patel as P.W.7 at Exh.33 and (8) Pravinsinh J. Zala as P.W. 8 at Exh.38 to prove its case against the respondents. The prosecution had also produced documentary evidence such as complaint lodged by complainant Rasiklal at Exh.15, panchnama at Exh.23, sanction to prosecute respondents at Exh.25 and 26 respectively, etc., in support of its case against the respondents. After recording of evidence of prosecution witnesses was over, the learned Judge had recorded the statements of the respondents under Section 313 of the Code of Criminal Procedure. In their further statements respondents claimed that case of the prosecution against them was false but did not examine any witness in support of their defence. On appreciation of evidence adduced by the prosecution, the learned Judge has disbelieved the case of prosecution and acquitted the respondents by judgment dated April 22, 1988 giving rise to the present appeal.

3. Mr.B.D.Desai, learned counsel for the State

Government after taking us through the entire evidence on record pleaded that the evidence of complainant Rasiklal is corroborated in material particulars not only by his complaint but also by the evidence of panch witness Zaverbhai Patel as well as testimony of investigating officer Mr.Zala and therefore the case of the prosecution against the respondents ought to have been accepted by the learned Judge. Stress was laid on the circumstance that in presence of independent witnesses, five currency notes each having denomination of Rs.100/- were recovered from the hip pocket of the trousers of respondent No.1 and therefore respondent No.1 ought to have been convicted under Section 5 (1) (2) of the Prevention of Corruption Act. What was claimed was that respondent No.1 had accepted the amount of illegal gratification at the instance of respondent No.2 and in view of the reliable and trustworthy evidence led by the prosecution, the appeal should be accepted.

4. Mr.D.D. Vyas, learned counsel for the respondents submitted that the evidence on record establishes that the complainant was willing to give bribe amount and as he is an accomplice, the learned Judge was justified in disbelieving his evidence for want of corroboration by independent evidence in material particulars. The learned counsel extensively referred to the evidence of complainant as well as Panch No.1 and pleaded that in view of material contradictions appearing in the evidence of witnesses, no case was made out against any of the respondents. The learned counsel highlighted the improbability appearing in the prosecution case and submitted that even if two views of the matter are possible the acquittal recorded by the learned Special Judge should not be set aside, in the present acquittal appeal. According to the learned counsel for the respondents, the view taken by the learned Special Judge is not only reasonable, but supported by evidence on record and therefore there being no substance in acquittal appeal, the same should be dismissed.

5. We have heard the learned counsel for the parties and taken into consideration the evidence on record. There are different types of bribe givers. Firstly, the person who offers bribe to prompt a public servant to do him an undeserved favour. Secondly, the person who pays to a public servant to see that normal official act is done early and promptly and in favour of the bribe giver. Thirdly, the type of person who is driven to pay a bribe on demand to do a normal work just to avoid coercion or harassment in getting the work which could normally be

done in the official business, and the fourth is a type of person who pays a bribe to a public servant on demand by the public servant after his work is over and when the public servant demands it as a regard for what he has done. A bare perusal of the evidence of complainant makes it evident that he had agreed to make payment of illegal gratification to see that normal official work act was done early and promptly and in his favour. This is so admitted by the complainant in paragraph 9 of his deposition. The complainant had shown willingness to make the payment of illegal gratification because according to him he was to be benefited monetarily. In view of this part of evidence of the complainant, we are of the opinion that the learned Special Judge did not commit any error in treating the complainant as an accomplice and seeking corroboration to his evidence from independent evidence in material particulars. The complainant has admitted in terms in paragraph 9 of his deposition that respondent No.2 had not made any demand for illegal gratification from him when he had seen respondent No.2 at his office on May 28, 1984, May 30, 1984 and June 6, 1984. Even on June 7, 1984 according to prosecution, respondent No.2 had asked the complainant to make payment of Rs.500/- to respondent No.1, but it is not the case of the prosecution that on that day also any demand of illegal gratification was made by respondent No.2. Admittedly, no currency notes were recovered from respondent No.2. Therefore, in our view, the learned Special Judge was justified in holding that no case against respondent No.2 was made out by the prosecution.

6. Coming to the case of prosecution against respondent No.1, we find that the complainant in his evidence has claimed that he had gone to the office of Anti Corruption Bureau at about 5.00 p.m. in the evening of June 7, 1984. The evidence of P.I. Mr. Zala unerringly establishes that he had recorded the complaint of the complainant at about 9.45 p.m. on June 7, 1984. What was done by the complainant at the office of the Anti Corruption Bureau from 5.00 p.m. to 9.45 p.m. is not explained by the complainant at all. The complainant has clearly stated that after recording of his complaint was over, he was instructed by P.I. Mr. Zala to come to the office of Anti Corruption Bureau on the next day at about 8.00 a.m. in the morning with money, but the complainant has stated that he had gone to the office of the Anti Corruption Bureau on June 8, 1984 at 5.30 a.m. in the morning. The complainant has not explained as to why he had gone to the office of A.C.B. at 5.30 a.m. in the morning though he was instructed to come to the said office at about 8.00 a.m. in the morning. According to

the complainant when he went to the office of the A.C.B. two panch witnesses were present but Panch No.1 has categorically stated that he was contacted by P.I. Mr.Zala at the market at about 6.00 a.m. in the morning and therefore the claim made by the complainant that the panch witnesses were present at the A.C.B. office when he had gone to the said office at 5.30 a.m. in the morning becomes doubtful. Though the complainant was clearly instructed to give the amount to respondent No.1 at the store room, the complainant paid the amount to respondent No.1 on road near the store room and no panchnama was prepared at the place where allegedly the amount of illegal gratification was accepted by respondent No.1. The evidence of Panch No.1 would indicate that several particulars which ought to have been mentioned in the panchnama were not mentioned and other particulars which were mentioned were false. His evidence further establishes that the contents of the panchnama were reduced into writing by P.I. Mr.Zala and though wrong facts were stated in the panchnama, he could not object to the same as he was a Government Servant. This would indicate that presence of independent panch was not secured at the time of trap and the raid was not carried out in the manner required by law. Further the case of the prosecution that respondent No.1 had accepted the amount of bribe on road does not appear to be probable more particularly when the distance between the place at which the alleged demand was made and the office was hardly 25 feet. We may note that the complainant had experience as to how raid is being conducted and that he was supposed to carry out instructions given by the Investigating Officer because earlier he himself had arranged a trap against the doctor and was a witness in another trap case. Thus, deviation made by the complainant disregarding the instructions of the investigation officer is not understandable. When the recovery of bribe money itself is in doubt, we are of the opinion that the learned Judge did not commit any error in acquitting the respondents. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of witnesses. As we are in general agreement with the view expressed by the learned Judge. We do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned

Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decision rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C.1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

For the foregoing reasons the appeal fails and is dismissed. Mudammal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgement.

(J.M. Panchal, J).

(S.D. Dave, J).

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